IN THE HIGH COURT OF PUNJAB AND HARYRNA AT CHANDIGARH

C.R. No.2812 of 2005
Date of Decision:- 07.09.2006

HAFED ....Petitioners

through
Mr.Pankaj Jain, Advocate

vs.

R.P.Bhardwaj ....Respondent

through
None.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT

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SURYA KANT, J.

This revision petition has been preferred against the order dated 10.1.2005 passed by the learned Additional District Judge, Rohtak whereby he accepted the appeal filed by the respondent-plaintiff and set aside the order dated 7.6.2004 passed by the learned Additional Civil Judge (Sr.Division), Rohtak and consequently restrained the petitioner-defendants from effecting the recovery of Rs.33,527/- from the respondent-plaintiff.

The respondent-plaintiff filed a suit for declaration challenging an order dated 30.7.2003 passed by the petitioner authorities against him. Vide the said order, the petitioner authorities have held the respondent-plaintiff responsible for some shortage in the stock of wheat in the godown and have directed him to deposit a sum of Rs.33,527/- so as to make the deficiency good. Along with the suit, the respondent-plaintiff also moved an application under Order 39 Rules 1 and 2 CPC, which was, however,

dismissed by the learned trial Court after observing that since a criminal case has been registered in relation to the said alleged shortage and the criminal Court had framed charges against the respondent-plaintiff, the discretionary relief of injunction cannot be granted.

Aggrieved, the respondent-plaintiff preferred an appeal which was accepted by the learned Additional District Judge, Rohtak, who vide the impugned order has granted the injunction and restrained the petitioner-defendants from effecting the recovery in question.

I have heard learned counsel for the petitioners at length and perused the impugned order.

In the matter of grant of ad interim injunction, the Courts are guided by the three well settled principles, namely,:-

(i) Whether prima facie case is made out or not;

(ii) balance of convenience; and

(iii) irreparable loss and injury.

In order to find out as to whether the respondent-plaintiff has made out a prima facie case or not, the learned First Appellate Court, prima facie, has taken notice of the conceded position that despite the stock record having been admitted to be correct on its verification on 29.4.2002, the impugned recovery order was passed without affording an opportunity of hearing to the respondent-plaintiff.

As regard to the balance of convenience, the First Appellate Court has observed that since the order of recovery appears to be apparently illegal and if it is allowed to operate, it will cause extreme hardship to the respondent-

plaintiff and, thus, the balance of convenience lies in his favour. So far as the irreparable loss and injury is concerned, it appears that if the entire recovery is allowed to be effected and the order dated 30.7.2003 is implemented during the pendency of the suit, it might render the declaratory suit as infructuous unless it is amended to substitute the nature of relief.

Be that as it may, the parameters to interfere in injunction matters by a revisional Court are altogether different. Even if, on the basis of material on record, a contrary opinion can be formed, yet it cannot be substituted in place of the view taken by the Courts below.

Since the ad interim injunction has been granted by the First Appellate Court keeping in view the well settled principles, no interference by this court in exercise of its revisional jurisdiction is called for.

Consequently, I do not find any merit in this revision petition which is accordingly dismissed.

September 07, 2006 **(SURYA KANT)**
poonam **JUDGE**